IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RONALD MELTON, et al. : CASE NO. C-1-01-528

Plaintiffs : (Judge Spiegel)

vs. :

BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, et al. :

:

Defendants

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO CONSOLIDATE

Plaintiffs respectfully move this Honorable Court to deny Defendants' motion to consolidate this action with the already consolidated action captioned *Chesher, et al. v. Tom Neyer, Jr., et al.*, Case No: C-1-01-566 (consolidated with Case No: C-1-01-771), which is also pending before this Court. In support, Plaintiffs posit that consolidation of this action as requested by Defendants will have exactly the opposite effect than that which is sought by consolidation. Instead of furthering the interests of justice and promoting judicial economy, the opposite will result.

Contrary to Defendants assertion, there will not be duplicative efforts by the Court. Furthermore, any duplicative efforts by the parties shall be minimal at best. The actions which Defendants seek to consolidate with this action involve a great deal more claimants than those within the instant action, seek class action certification which is not being sought by Plaintiffs in this action, have claimants who have different interests than Plaintiffs herein, and seek dissimilar relief than that which is sought in this action. Indeed, the only thing in common between the other actions and this action is that one of the decedents of whom photographs were released by the morgue is the same as the one in this action. However, that is where the commonality starts and ends.

Further, the actions which Defendants now seek to consolidate with this action are at decidedly different stages of procedure and discovery than this action. For example, Plaintiffs in the other actions have already deposed a number of Defendants (notwithstanding the fact that it was apparent to Plaintiffs herein that such depositions were premature and would probably be met with assertions of said Defendants' Fifth Amendment rights to not testify against themselves in light of the fact that the criminal proceedings were not yet over). Plaintiffs herein purposely have waited to take depositions in this action because of such in an attempt to minimize the expense of litigation. In addition, more extensive paper discovery has apparently taken place in the other actions than has taken place in this action; again, because Plaintiffs herein purposely have waited until a more complete exchange of information and documentation could take place than what could take place up to this time because of the pending criminal matters.

Indeed, Defendants do not even suggest to the court how they would ensure that Plaintiffs in this action will not be prejudiced in light of the extensive discovery which has occurred to date in the other actions. Plaintiffs quare - How will they be brought up to date on the discovery conducted heretofor? Who will bear the expense of bringing them up to date on the discovery conducted heretofor? These are legitimate questions which are not even addressed by Defendants.

Plaintiffs contend that the reason such is not addressed is because Defendants know or should know that consolidation at this late date will only serve one purpose - provide advantage to Defendants and disadvantage to Plaintiffs in this action. Plaintiffs should not be prejudiced. It is not like Defendants were not aware of this action when the other actions were consolidated. It is not like Defendants were not aware of this action when the other actions proceeded with discovery. The delay itself in Defendants making this request for consolidation is sufficient grounds to reject Defendants attempt to consolidate this action with the others because of the evident prejudice resulting to Plaintiffs herein as a result of said delay.

In conclusion, Plaintiffs opine that the goals of consolidation; to wit, economy of time and effort for the court, for counsel, and for the litigants, will not be achieved by a consolidation of the other actions with this action. Plaintiffs contend that rather than further the interests of justice, consolidation shall actually serve to impede justice for them. Consolidation will cause them to be disadvantaged. They nor their counsel should not be compelled to suffer through hours of discovery not related to their claims. They should not be compelled to suffer through expensive and unproductive discovery. To force such would be a disservice to Plaintiffs. Accordingly, Plaintiffs respectfully request that Defendants motion to consolidate by denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served on opposing counsel at their respective addresses by ordinary U.S. mail, postage prepaid, this 24 day of October, 2002.

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